

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
JUDICIARY**

**Tuesday, February 7, 2012
2:00 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2590, HOUSE DRAFT 1
RELATING TO AQUATIC RESOURCE VIOLATIONS**

House Bill 2590, House Draft 1 seeks to provide for transformative administrative penalty alternatives, and for an enhanced collection mechanism for outstanding fines and penalties resulting from aquatic resource violations. The Department of Land and Natural Resources (Department) strongly supports this Administration measure.

For many years, the Department has received numerous criticisms relating to the perceived lack of enforcement capacity for its aquatic resource laws. Accordingly, the Department has recently made substantial efforts to improve the capacity of the Department's Division of Conservation and Resources Enforcement to better monitor, educate, and encourage compliance with aquatic resources regulations in the field.

However, it has become apparent that the functions of natural resources law enforcement – including deterrence, rehabilitation, restoration, and providing the assurance of compliance necessary for community engagement in management strategies – cannot be properly fulfilled without addressing issues arising out of a nearly exclusive reliance on the criminal justice system.

This Administration measure therefore provides the tools necessary for the Department to more consistently, efficiently, and appropriately address aquatic resource violations through the expanded use of its civil, non-criminal administrative enforcement process. The express authority to apply transformative penalties through natural-resources related community service will also provide a unique opportunity to turn poachers into stewards and advocates for our nearshore aquatic resources, as demonstrated in a variety of other jurisdictions.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The Department therefore strongly supports this opportunity to take a significant step forward in fulfilling its responsibilities to conserve and manage the nearshore aquatic resources of the State.

Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 2590 HD1 Relating to Aquatic Resource Violations
House Committee on Judiciary
Tuesday, February 7, 2012, 2:00PM, Room 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports H.B. 2590 HD1.

There is widespread agreement amongst a variety of stakeholders that Hawaii's fragile environment is in need of improved compliance, enforcement and prosecution of violations of our State natural resource laws. A 2006 State Auditor's report concludes that DLNR Division of Conservation and Resources Enforcement (DOCARE) officers are spread too thin and lack the equipment they need to do their jobs. In a better economy, the Legislature had been able to support an increase in the number of trained officers and equipment. Not to be deterred by the current tough fiscal climate, DOCARE undertook its own review and strategic planning effort to improve its operational processes. Seeking national law enforcement accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA www.calea.org) is an important outcome of that process.

Against this backdrop, a number of communities across the state have been organizing themselves to become more directly involved in the care and management of their natural resources, particularly in coastal and near shore areas. Some communities have partnered with DOCARE to raise awareness of natural resource laws and to improve compliance with those laws. With increased community involvement in marine resource management and enforcement, it will help DLNR, DOCARE, and community-based managers to have additionally flexibility in applying effective civil penalties to justly punish current infractions, effectively deter future violations, and foster greater compliance in the future. H.B. 2590 offers two enforcement strategies with community service and license suspension that can be employed when criminal or financial penalties are ineffective, particularly in an overburdened state court system.

Thank you for this opportunity to offer our support for this measure.

BOARD OF TRUSTEES

S. Haunani Apoliona Christopher J. Benjamin Anne S. Carter Richard A. Cooke III Peter H. Ehrman Kenton T. Eldridge
Thomas M. Gottlieb James J.C. Haynes III J. Douglas Ing Mark L. Johnson Dr. Kenneth Y. Kaneshiro Bert A. Kobayashi, Jr.
Eiichiro Kuwana Duncan MacNaughton Bonnie P. McCloskey Bill D. Mills Wayne K. Minami Michael T. Pfeffer James C. Polk
H. Monty Richards Chet A. Richardson Jean E. Rolles Scott C. Rolles Crystal K. Rose Dustin M. Shindo Nathan E. Smith Eric K. Yeaman

Chair: Kenton T. Eldridge *Chair Emeriti:* Samuel A. Cooke (co-founder; chair 1980-1991), Herbert C. Cornuelle (co-founder), Bill D. Mills (1991-1995), Jeffrey N. Watanabe (1995-2004), David C. Cole (2004-2008), Duncan MacNaughton (2008-2011)



February 7, 2012

Directors

*Mitch D'Olier
Amy Monk
Michael B. Pietsch
Jennifer Taylor
Laura Thompson
Jean Tsukamoto
Carol Wilcox*

To: Representative Gilbert S.C. Keith Agaran, Chair
Representative Karl Rhoads, Vice Chair and
Members of the House Committee on Judiciary

From: Amy Monk, Member, Board of Directors, Malama Maunalua

Re: HB 2590 Relating to Aquatic Resource Violations
Hearing: Tuesday, February 7, 2012, 3 p.m., Conference Room 325

Position: STRONG SUPPORT

Thank you for hearing this bill and for allowing me to present testimony today, in strong support of HB 2590 which provides for administrative penalties for aquatic resource violations providing an effective alternative to enforce existing laws which protect threatened or endangered species.

The mission of Malama Maunalua is to conserve and restore a healthy and productive Maunalua Bay through community kuleana. Based in East Honolulu, Malama Maunalua was founded in 2005, where we found supportive and cooperative partners in other community and environmental organizations, including Polynesian Voyaging Society, Hui Nalu Canoe Club, The Nature Conservancy and NOAA. In 2010/11, more than 3,000 volunteers have joined us in Maunalua Bay restoration activities, principally the clearing of invasive seaweed, but also reducing land based pollution and runoff, and restoring native aquatic habitat. Restoring habitat is vital to protecting and encouraging the restoration of native fish, shellfish, limu, and other aquatic resources. We are here because HB 2590 will support our mission to restore the health of Maunalua Bay. It will do the same for other coastal areas that are threatened by illegal activities.

There are very few Division of Conservation & Resources Enforcement ("DOCARE") officers and their area of responsibility is the entire State of Hawaii, from our coastal waters to our forests on the mountain ranges and the streams in the valleys. We know their resources are stretched very thin. A successful resource violation prosecution may take hours or days to properly investigate and document. Moreover, it is understandable given the priorities of an overburdened justice system, that the limited resources of the county prosecutors' offices, the state public defender's office, and the criminal court system, would focus on cases of assault or drug trafficking over prosecution of the illegal fish nets or taking undersized fish.

If enforced, current laws are adequate to protect the Hawai'i's aquatic resources, but the fact that there are very few prosecutions means there is no effective deterrent to the violation of existing laws. We believe civil fines levied by BLNR administrative



enforcement, or effective non-criminal monetary penalties, will provide a more effective deterrent to violators. At the same time, it may mitigate the costs of resources enforcement currently lost in the criminal justice process.

It is for these reasons, we support legislation that would:

1. Give the Board of Land & Natural Resources ("BLNR") or an authorized hearings officer the authority to impose natural resources-related community service in lieu of, or in addition to, civil fines for aquatic resources violations; and
2. Provide a process by which the BLNR may suspend or revoke the driver's license of violators who refuse to comply with levied fines or mandatory community service.

We believe that giving DLNR additional tools to protect Hawai'i's natural resources will discourage poaching and illegal harvest of our aquatic resources. Penalties which have some bite, either financial penalties, community service, or the loss of a driver's license will give violators disincentives to breaking existing laws, which are, currently violated with impunity. We urge the committee to pass this measure.



CONSERVATION COUNCIL FOR HAWAII

Testimony Submitted to the House Judiciary Committee

Hearing: Tuesday, February 7, 2012 2 p.m.

Conference Room 325

In support of HB 2590 HD 1 Relating to Aquatic Resource Violations

Aloha. The Conservation Council for Hawai'i supports HB 2590 HD 1. This bill will greatly enhance the State's capacity to enforce its aquatic resources laws by providing the Board of Land and Natural Resources with the authority to use its civil administrative enforcement process in a more efficient, transformative, and consistent manner. This bill allows the BLNR to impose natural-resources related community service as a civil penalty in lieu of, or in addition to, monetary administrative fines, and further provides for a process by which the BLNR may place a stopper on a poacher's driver's license if he or she refuses to perform such community service or pay such administrative fines within the timeline set by the BLNR.

HB 2590HD 1 provides is a creative and effective process to address aquatic resource violations. The process is fair, consistent, and efficient. We attach a one-page sheet on why HB 2590 HD 1 is important and worthy of your consideration and support.

Mahalo nui loa for the opportunity to testify.

Sincerely,

Marjorie Ziegler



Hawai'i's Voice for Wildlife – *Ko Leo Hawai'i no na holoholona lohiu*

Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www.conservehi.org

P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 220 • Honolulu, HI 96814

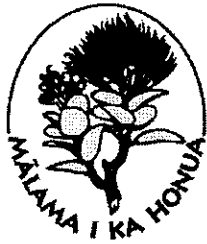
President: Hannah Springer * Vice-President: Julie Leialoha * Treasurer: Rick Barboza * Secretary: Maka'ala Ka'aumoana

Directors: Lida Pigott Burney * Koalani Kaulukukui * Robin Kaye

Executive Director: Marjorie Ziegler

Why HB 2590 HD 1 Is Important

1. **HB 2590 will greatly enhance the state's capacity to enforce its aquatic resources laws.** Resource managers, scientists, conservationists, fishers, and policy experts all agree that the state's enforcement capacity presents a significant barrier to more effective management efforts. By resolving legitimate concerns with the civil administrative enforcement process, HB 2590 will pave the way for the Department of Land and Natural Resources to effectively apply non-criminal monetary penalties through civil enforcement – a more efficient, effective, and appropriate process to address resource violations.
2. **The criminal justice system does not address resource violations consistently or with the appropriate level of concern.** Currently, the DLNR's exclusive reliance on the criminal justice system and the county prosecutors means that the relatively few aquatic resource cases are lumped in with hundreds of daily, more commonly encountered and easily understood violations, i.e. assaults, driving violations, drug possession, etc. As a result, penalties are inconsistent and often inappropriate, frustrating both managers and community stakeholders. Civil administrative enforcement before the Board of Land and Natural Resources will ensure that resource violations are dealt with consistently and with appropriate seriousness, without resorting to the criminal justice system.
3. **Transformative penalties provide an effective alternative to criminal liability.** In many cases, former poachers have become some of the most outspoken and effective stewards of the natural environment, if given the chance to understand their potential value in the rehabilitation of resources impacted by human activity. HB 2590 provides the BLNR the ability to apply natural-resources community service in lieu of criminal penalties, providing a unique opportunity to transform former poachers into stewards of our aquatic resources.
4. **HB 2590 will save the state money.** Division of Conservation & Resources Enforcement officers dedicate their careers to protecting our natural resources, through compliance and enforcement actions in the field. However, officers are often frustrated with the minimal fines that result from aquatic resource cases that may take hours or even days of their time to properly investigate and document; cases that also consume considerable resources in the county prosecutors' offices, the state public defender's office, and the criminal court system. The meaningful civil fines provided for in administrative enforcement by the BLNR will not only provide a much more effective deterrence to resource violations, but may further mitigate the costs of resources enforcement currently lost in the criminal justice process.
5. **Driver's licensing revocation will give teeth to resources enforcement, without resorting to civil litigation or the criminal process.** A major obstacle to administrative civil enforcement has been the lack of effective remedies for violators who ignore levied fines, as the only current remedy is the initiation of costly civil litigation. HB 2590 will grant DLNR the ability to revoke a poacher's driver's license if they refuse to cooperate with levied fines or natural resources-related community service, providing a relatively efficient yet strong incentive for violators to take these fines seriously.
6. **This bill will provide a huge step forward in fostering community-based fisheries management.** Without a more effective law enforcement process to assure compliance by all stakeholders, community-based fisheries management efforts face considerable difficulties in fostering constructive engagement by users of our nearshore aquatic resources. By providing a more consistent and effective process to address resource violations and foster greater compliance with the law, this bill may greatly encourage the formation of community-based management strategies, as individuals will be much more likely to participate in management efforts when assured that others will comply.
7. **This bill may provide a model for an environmental court.** Many other jurisdictions have established a variety of "environmental courts," or tribunals specifically tasked with adjudicating environmental cases. The success of these institutions has prompted numerous attempts to establish an environmental court in Hawai'i; however, the magnitude and uncertainties of these previous proposals have effectively deterred their adoption. Giving the BLNR the tools it needs to explore administrative enforcement in the aquatic resources context may be a first, much more modest step towards exploring how an environmental tribunal may greatly enhance Hawai'i's capacity to defend and protect our natural and cultural resources.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803

808.538.6616 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON JUDICIARY

February 7, 2012, 2:00 P.M.
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 2590, HD1

Aloha Chair Keith-Agaran and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 9,000 dues paying members and supporters statewide, supports HB 2590 (HD1). This bill would provide the Board of Land and Natural Resources with additional flexibility to impose administrative penalties and ensure compliance.

Hawaii's nearshore and reef fisheries are in decline. Part of the reason for their decline is the behavior of individuals and businesses who flout our conservation laws. The legislature should support efforts to increase enforcement and to give BLNR the necessary flexibility to ensure that the enforcement occurs. This bill takes a step in that direction.

Mahalo for the opportunity to testify.



Recycled Content

Robert D. Harris, Director



Testimony to the Committee on Water Land Oceans
Monday, January 30; 9:15 a.m.
Conference Room 325

Speaking in Support

RE: HB 2590 HD1

Chair Representative Gilbert S.C. Keith-Agaran, Vice Chair Representative Karl Rhoads, and Members of the Judiciary Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition.
The OTC represents over 300 small ocean tourism businesses state wide.

We support the intent of HB 2590 HD1 to provide penalty alternatives and an enhanced collection mechanism for outstanding fines and penalties. We do question the short time line in the last paragraph of section (g): Page 6, line 5-7:

“For the purposes of this subsection and subsection (h), the date of issuance of a notification shall be two days following the date of mailing of the notice of intent to certify.”

10-14 days would seem to be more reasonable.

It seems unreasonable to burden the BLNR with issuing a notice of completion once the Penalties are all satisfied so the individual can get the drivers license renewed. This process could take several additional weeks. This should be able to be resolved at a district manager level.

Thank you for the opportunity to submit testimony. If you have any questions, please contact me at 808-870-9115.

Sincerely,

James E. Coon, President



Emailed Feb. 7, 8 am, 2012 to JUDtestimony@Capitol.hawaii.gov;

Testimony for the House Committee on Judiciary

Hearing on HB2590 HD1

Feb. 7, 2012

2:00 pm Room 325

Dear Chair Keith-Agaran, Vice Char Rhoads, and Members of the Committee:

Mālama Pūpūkea-Waimea

Post Office Box 188
Hale'iwa, HI 96712

Board of Directors

Denise Antolini

John Cutting

Bob Leinau

Staff Members

Drew Wheeler

Jenny Yagodich

Federal 501(c)(3) FEIN27-0855937
State of Hawaii Non-Profit
GET W90711385-01

Mālama Pūpūkea-Waimea **SUPPORTS HB2590 HD1** the ABOUTFACE bill ("Authorizing the Board to Use Transformative, Fair, and Consistent Enforcement").

Mālama Pūpūkea-Waimea (MPW) is a North Shore community group whose mission is to "to replenish and sustain the natural and cultural resources of the Pūpūkea and Waimea Ahupua'a for present and future generations through active community stewardship, education, and partnerships."

For the past seven years, MPW has focused its successful volunteer outreach and community education programs on protecting the Marine Life Conservation District (MLCD) at Pūpūkea-Waimea, including Shark's Cove, Three Tables, and Waimea Bay.

DLNR is a vital partner with MPW in our community stewardship efforts under the statewide Makai Watch Program. Strengthening DLNR's enforcement programs through the innovative and common sense approaches in HB2590 is critically important to protecting our precious ocean resources.

Please support DLNR and HB2590.

Mahalo,

Denise Antolini, President
MPW Board of Directors

Testimony for HB2590 on 2/7/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 07, 2012 5:38 AM

To: JUDtestimony

Cc: meleoli@yahoo.com

Attachments: MFS Exec Sum Jan 12 doc.pdf (2 MB)

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Carol Wilcox

Organization: Malama Maunalua

E-mail: meleoli@yahoo.com

Submitted on: 2/7/2012

Comments:

Dear Chairman and members of the Judiciary,

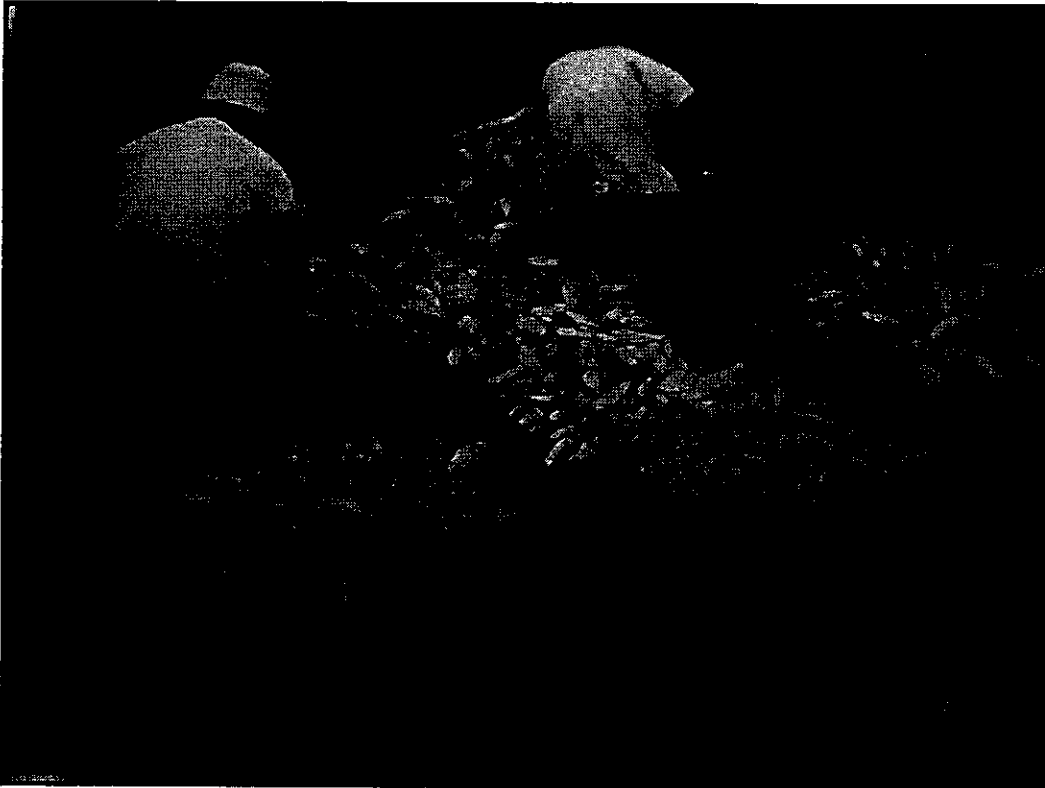
Thank you for allowing me to testify. I am a member of the Board of Directors of Malama Maunalua, an organization whose mission is to conserve and restore a healthy and productive Maunala Bay through community kuleana. Maunalua Bay extends from Black Point to Koko Head and the region has about 60,000 residents.

We find this bill to be carefully crafted to practically address enforcement issues. There is a high potential for success with just a slight shift in process and consequence.

Last year we conducted a survey of fishermen who are experienced in fishing Maunalua Bay. There was significant agreement among them that the health of the Bay is poor and in decline and that lack of enforcement is one of the leading causes of these problems. As you can see by the attached report, an overwhelming 97% of the fishermen support better enforcement. The residents generally and the fishermen of Maunalua Bay in particular want to see a healthy and productive bay, and ask for your support of this bill.

submitted on behalf of Malama Maunalua, a community based organization
Carol Wilcox

MAUNALUA BAY FISHING COMMUNITY ASSESSMENT



Maunalua Bay fishermen and their catch, circa 1930s. Photo credit: A. Winter Family

Prepared for:

Malama Maunalua

By

Kainalu Consulting LLC
367-C Kapaloala Place
Honolulu, HI 96813

December 2011

About this Report

The following pages describe the results of a research assessment on the Maunalua Bay fishing community, conducted by a survey team comprised of Makai Watch volunteers and Malama Maunalua community members. The project, entitled "Maunalua Bay Fishing Community Assessment," was initiated in fall 2010 and was completed in July 2011. Research activities were conducted by Kainalu Consulting LLC for Malama Maunalua under an agreement between Tri-Isle Resource Conservation and Development Council, Inc. and Kainalu Consulting LLC, dated 7 February 2011. The research findings presented herein may be used to support Malama Maunalua's goals to conserve and restore a healthy and productive Maunalua Bay through collective community kuleana.

Our research involved extensive social science research and analysis, including a review of existing research and an intensive field research component that consisted of interviews with community members, key respondents and expert fishers in the Maunalua area and nearby communities. Pursuant to the scope of work for this project, data analysis activities included:

- 1) Compiling interview data and providing a quality assessment prior to analysis; 2) Performing a standard set of descriptive statistical analyses on the quantitative interview data; and
- 3) Reviewing qualitative responses and including an overview or summary of these responses in the final report. These research activities and analyses generated a significant amount of data and information, and the methods for data collection and analysis and results of the research are summarized in this report.

Suggested citation:

Kittinger JN, and DS Kittinger (2011). Maunalua Bay Fishing Community Assessment. A report prepared for M_lama Maunalua. Kainalu Consulting LLC, Honolulu.

For further information direct inquiries to:

John N. (Jack) Kittinger, PhD
Stanford University
Center for Ocean Solutions
Woods Institute for the Environment
99 Pacific Street, Suite 155A
Monterey, CA 93940 USA

Phone: +1 808-397-9077
Email: jkittinger@gmail.com

Acknowledgments

We thank the key respondents and community members involved in the fishing survey effort, who shared their insights and deep knowledge of fishing and Maunalua Bay with us. We also thank the Malama Maunalua community and Makai Watch volunteers for their help in executing this research. This research was supported by a grant from Malama Maunalua, and we thank Alike Winter, Carol Wilcox and Jennifer Taylor for their support. Any errors or omissions belong to the authors alone. Our team also thanks the National Oceanic and Atmospheric Administration (NOAA) for funding support.

EXECUTIVE SUMMARY

This report describes the results of a community-led survey of Maunalua Bay fishers to quantify their collective knowledge, perceptions and opinions about the condition of the bay and its fisheries. The overarching goal of the research was to assess fishing community perceptions of the health of the bay and its fisheries, characterize the fishing community and their activities in the bay, and solicit information from them about recommended actions for the future of the bay, in order to ensure that the fishing community has a voice in future planning or management processes.

A set of commonly employed social science methodologies were utilized to systematically gather social and ecological information about the fishing community in Maunalua Bay and nearby areas. Fishers were identified through a chain referral (or “snowballing”) sampling method, and in-depth, face-to-face interviews were conducted with fishers for the study. The primary planning for this research was initiated in 2010, and field research was conducted from January – July 2011.

Fifty-eight fishers from Maunalua and surrounding communities were interviewed in the course of this research. The average number of years of experience fishing in Maunalua Bay among respondents was 34.61 years, and many fishers had more than 40+ years fishing in the bay. Five fishers (8.7% of the total interview sample) had 55+ years of fishing experience in the bay. Together this indicates that the respondent pool was primarily comprised of long-time fishers that were experienced and knowledgeable about Maunalua Bay and its fisheries resources.

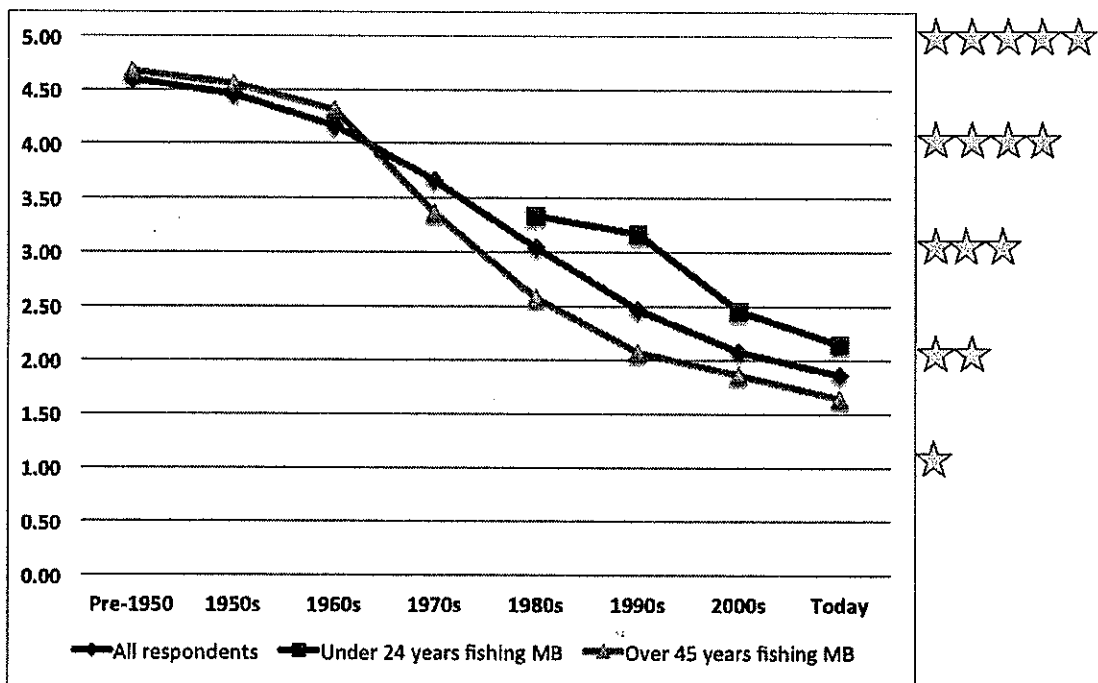
The fishing community of Maunalua Bay comprises a diverse set of ocean users that access the entire bay and exploit all fisheries habitats from the intertidal to the deep sea. Fishers reported that previously they spent more time fishing the intertidal and inside reef zones that are closer to shore – 55% previously compared with 26% in the present day. (See Figure 4 from report, below, modified to reflect totals for intertidal and inside reef zones.)



Recreational fishing activities are the most common fishing in Maunalua Bay. A diverse set of gears are used in the bay to exploit intertidal, coral reef, coastal pelagic and pelagic species. While a variety of gear types are used, 75% of respondents reported

using spears. Fisheries catch is primarily utilized for home consumption, but catch is also given away, released and sold. Among respondents, 'part-time' commercial activities comprise a minor aspect of the overall fishery. Among those reporting a portion of the catch sold, selling was a minor part of both the total catch and comprised a minor percentage of their income (<10%). Most seafood that is caught is kept for personal consumption (47.7%) Among all fishers, 29.3% reported holding a commercial license, but just 11.5% of fisheries catch was reported sold.

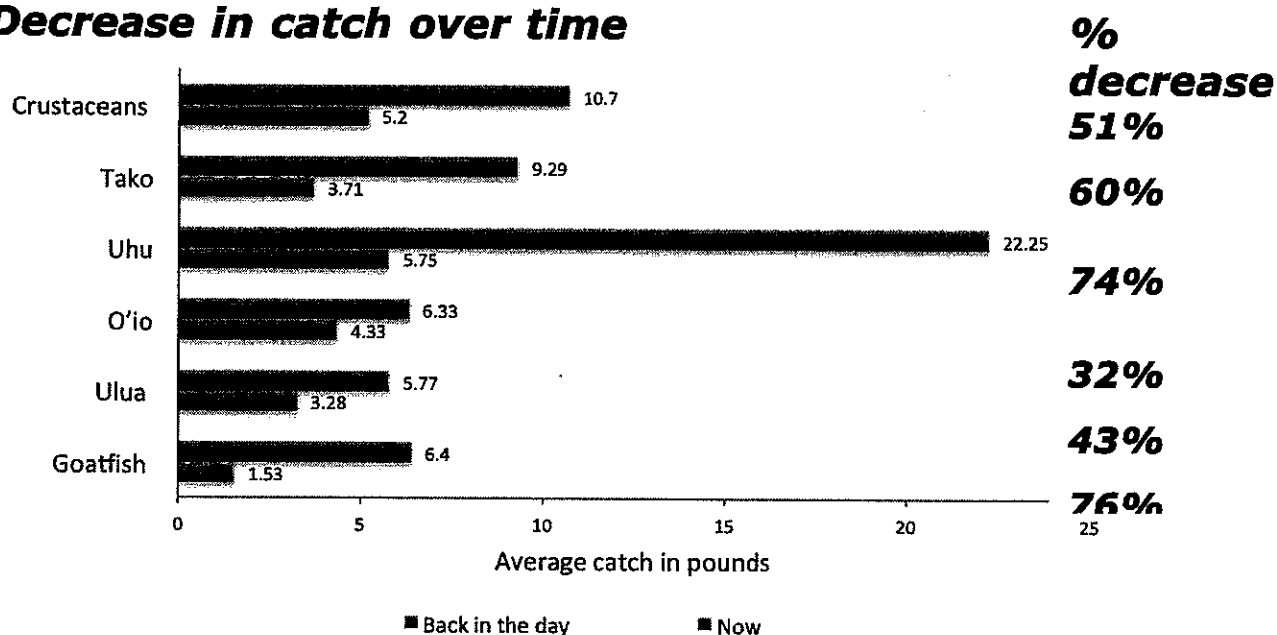
Among experienced and knowledgeable fishers, there is broad and widespread agreement that fisheries resources and habitats in the bay have declined in terms of abundance and quality (see Figure 11 from report, below).



Health of the bay over time: 4 stars = Healthy, Abundant, Diverse;

These striking declines, estimated by memory recall for both particular species and particular gears, show that most Maunalua fishers describe healthier and more abundant fishery conditions when they first started fishing as opposed to current conditions. Fishers described major declines in marine resources, habitat quality and increases in human threats to the bay through time. Among experienced fishermen who began fishing the bay prior to the 1970s, the perceptions of decline were more pronounced than fishers whose first association with the bay was recent by comparison. Current fisheries catches for preferred and commonly sought species have declined 32-76% from catches when fishers first started fishing in the bay. (See Figure 7 from report, below.)

Decrease in catch over time

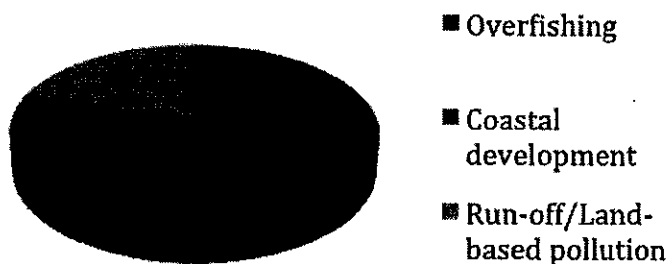


Correspondingly, catch by the most common gear types used in the bay has also declined substantially (13-62%, depending on gear type).

Fishers reported widespread observations about the reduction in diversity, abundance, and size of fish. Fishers described the following resources as declining: schooling coastal pelagics (e.g. akule, halalu, 'opelu), reef fish, limu, and reef-building corals.

Fishers identified the primary drivers of these changes as including: 1) Overfishing; 2) Coastal development; and, 3) Run-off/Land-based pollution. Analyses of qualitative data show that out of 92 descriptions shared by respondents, 40% are attributed to overfishing, 25% discussed coastal development, and 16% identified run-off/land-based pollution. Fishers also

Drivers of change in Maunalua Bay

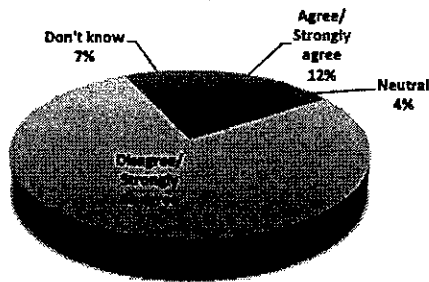


described common threats to resources in Maunalua Bay as including: 1) Overfishing; 2) Run-off/Land-based pollution; and, 3) Invasive species. Out of 130 descriptions

shared by respondents, 31% are attributed to overfishing, 30% discussed run-off/land-based pollution or channelization of streams; 11% discussed invasive species, and 6% mentioned coastal development.

Fishers exhibited a general consensus that enforcement is currently lacking in Maunalua Bay – 77% felt enforcement was insufficient.

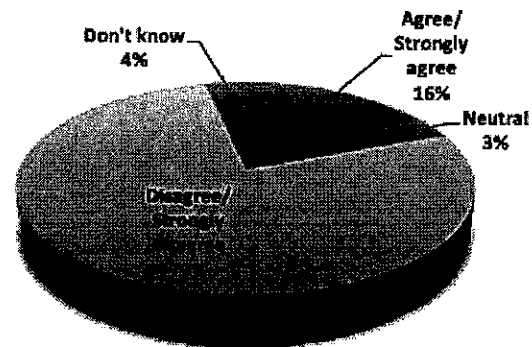
The current rules and regulations are sufficiently enforced in MB:



Interview data show that few fishers have witnessed enforcement personnel or actions in the bay, and many fishers have engaged directly in informal (non-state) enforcement measures, including documenting illegal activities or confronting violators.

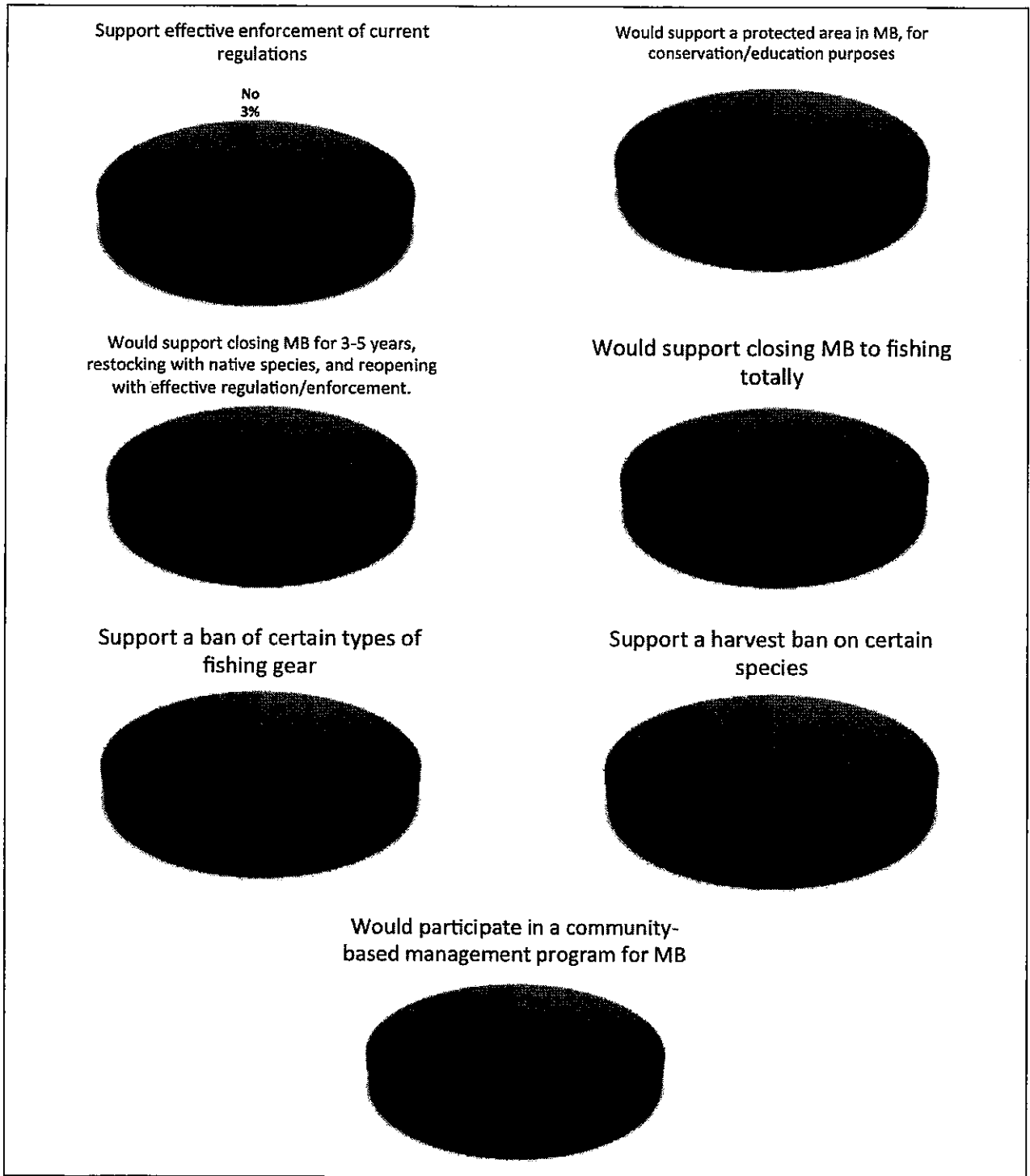
Although almost all fishers (97%) supported effective enforcement of current regulations, fishers were split on whether or not enforcing current rules/regulations would protect marine resources. Fishers did generally agree, however, that without some kind of change, their grandchildren would not experience an abundant and diverse environment in Maunalua Bay (see section of Figure 12 from report, below).

If management of the bay were to continue as it is currently, my grandchildren will enjoy and abundant and diverse environment.



The capacity of the fishing community to engage in stewardship is estimated to be high, based on levels of participation in local organizations, events and meetings on fishing topics and stated willingness to engage in community-based management program (84%).

The fishing community voiced support for various management strategies, including more effective enforcement and better management of diverse ocean user activities.



More than two thirds – 71% - of fishers support the implementation of a kapu zone/no-take marine protected area in the Maunalua region. Fishers also indicated support for other conservation measures, including harvest bans for some species (65.5%) and bans on certain types of fishing gear (75.9%). A majority of fisherman interviewed would not support total closure of the bay (88%).

The fishing community possesses deep ecological knowledge about their community and the environments and resources of the Maunalua Bay area. The knowledge base and capacity of Maunalua Bay fishers represents a significant resource to the community, and it is recommended that fishers be engaged as much as possible in processes focusing on proposed management actions or stewardship programs.

The data presented herein equate to a social and environmental baseline regarding fishing activities, environmental and fishery resource conditions, levels of support for various management strategies and fishing community capacity in Maunalua Bay. This baseline may be useful for developing community-based conservation or stewardship programs, or for fishing groups, individuals or other organizations seeking to understand more deeply the peopled seascape of Maunalua Bay.

Testimony for HB2590 on 2/7/2012 2:00:00 PM

Testimony for HB2590 on 2/7/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 07, 2012 8:50 AM

To: JUDtestimony

Cc: wctanaka@gmail.com

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Wayne Tanaka

Organization: Fish & Coral Think Tank

E-mail: wctanaka@gmail.com

Submitted on: 2/7/2012

Comments:

To the Honorable Committee Chair Keith Agaran, Vice-Chair Rhoads, and members of the House Committee on the Judiciary:

The members of the Fish and Coral Think STRONGLY SUPPORT HB2590, or what we call the ABOUT FACE Bill ("Authorizing the Board to Use Transformative, Fair, and Consistent Enforcement"). This bill will remove two significant barriers to the meaningful use of the Board of Land and Natural Resources' administrative civil enforcement authority, and will allow the board to explore enforcement approaches already utilized in many other jurisdictions.

For example, this bill will allow the state of Hawai'i to join many other jurisdictions where civil penalties are substantively used to address natural resource violations, including California, Florida, Texas, South Carolina, Louisiana, Michigan, Washington, and Vermont, among others. In addition, civil penalties have long been utilized by federal agencies tasked with natural resources enforcement, such as the United States Coast Guard and the National Oceanic and Atmospheric Administration.

The specific provision authorizing the imposition of natural-resources related community service as a transformative penalty for resource violations will also allow the Board to utilize an approach already implemented in other jurisdictions, including California, Iowa, Michigan, Minnesota, Oregon, South Dakota, and Washington.

Community service is also authorized as an alternative penalty in lieu of or in addition to administrative civil fines in a variety of jurisdictions. For example, Los Angeles county code section 1.25.075 allows for "request[s] to perform community service for violations relating to graffiti in lieu of [an] administrative fine and/or noncompliance fee." In Illinois, the city of Chicago allows hearing officers (i.e. administrative "judges") to also impose community service in addition to mandatory civil fines for ordinance violations; Oak Park has further been lauded for its approach in allowing administrative law judges to "impose fines and penalties, including supervision and/or community service" particularly where violators are under eighteen years old.

Finally, driver's licensing revocation provisions are used as a compliance measure both locally (by the Child Support Enforcement Agency), and as a penalty for offenses against public property in states including California, Colorado, Idaho, Maine, Maryland, Michigan, Nebraska, Pennsylvania, and Utah.

A more transformative, fair, and consistent resources enforcement system is necessary not only

Testimony for HB2590 on 2/7/2012 2:00:00 PM

to fulfill the traditional functions of law enforcement, including deterrence, rehabilitation, and restoration, but is also essential to allow fishers and other resource users to more meaningfully engage with the state's aquatic resources management strategies.

Thank you very much for the opportunity to testify on this bill.

Wayne Tanaka, Esq.
Consultant, Recreational Fisher
Fish and Coral Think Tank

Testimony for HB2590 on 2/7/2012 2:00:00 PM

Testimony for HB2590 on 2/7/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 06, 2012 12:39 PM

To: JUDtestimony

Cc: teganhammond@gmail.com

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Tegan Hammond

Organization: Individual

E-mail: teganhammond@gmail.com

Submitted on: 2/6/2012

Comments:

The contents of this bill are very impressive and offer a wide number of beneficial fixes for our currently ineffective marine resource violation penalty process. I know many many people are in support of this.

Please support this bill.

Mahalo

Testimony for HB2590 on 2/7/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 06, 2012 8:42 AM

To: JUDtestimony

Cc: thomas.k.ogawa@hawaii.gov

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Tom Ogawa

Organization: DLNR - Division of Aquatic Resources

E-mail: thomas.k.ogawa@hawaii.gov

Submitted on: 2/6/2012

Comments:

I manage the Hawaii Marine Recreational Fishing Survey (HMRFS) for the State of Hawaii and I strongly support HB2590. Our natural marine resources are vital to Hawaii's cultures as well as to Hawaii's tourist-based economy. No matter how many natural resource regulations are enacted, they remain largely ineffective when enforcement officers are given only limited jurisdiction. The fishing public in particular are well aware of these limitations and often boldly disregard regulations (ie. commit violations during daylight hours in plain view of many others who are trying to abide by those same rules) knowing that enforcement is limited and that the majority of convictions are dismissed anyway. If passed, this bill will hopefully pave the way for stricter penalties as well as greater jurisdiction for enforcement officers.

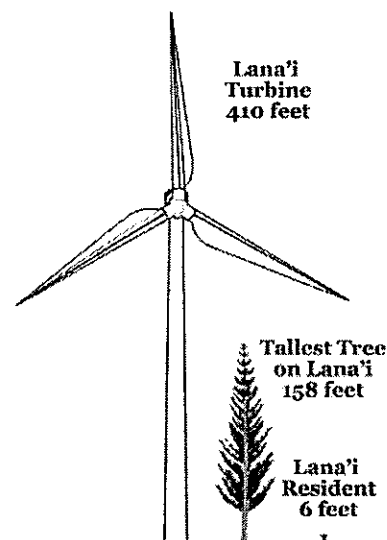
This bill -- HB2590 -- will greatly enhance the state's capacity to enforce its aquatic resources laws. The ABOUT FACE Act will pave the way for the Department of Land and Natural Resources ("DLNR") to effectively apply non-criminal monetary penalties through civil enforcement -- a more efficient, effective, and appropriate process to address aquatic resources violations.

Currently, the DLNR's exclusive reliance on the criminal justice system and the county prosecutors means that the relatively few aquatic resource cases are lumped in with hundreds of daily, more commonly encountered and easily understood violations, i.e. assaults, driving violations, drug possession, etc. Civil administrative enforcement before the BLNR will ensure that resource violations are dealt with consistently and with appropriate seriousness.

The ABOUT FACE Act provides the BLNR the ability to apply natural-resources community service in lieu of criminal penalties, providing a unique opportunity to transform former poachers into stewards of our aquatic resources.

A major obstacle to administrative civil enforcement has been the lack of effective remedies for violators who ignore levied fines, as the only current remedy is the initiation of costly civil litigation. The ABOUT FACE Act will grant DLNR the ability to revoke a poacher's driver's license if they refuse to cooperate with levied fines or natural resources-related community service, providing a relatively efficient yet strong incentive for violators to take these fines seriously.

This bill may greatly encourage the formation of community-based management strategies, as individuals will be much more likely to participate in management efforts when assured that others will comply.



Giving the BLNR the tools it needs to explore administrative enforcement in the aquatic resources context may be a first, much more modest step towards exploring how an environmental tribunal may greatly enhance Hawai'i's capacity to defend and protect our natural and cultural resources.

Respectfully submitted,

Robin Kaye
Friends of Lana'i

Testimony for HB2590 on 2/7/2012 2:00:00 PM

Testimony for HB2590 on 2/7/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Saturday, February 04, 2012 3:05 PM

To: JUDtestimony

Cc: Alika@malamamaunalua.org

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Alika

Organization: Malama Maunalua

E-mail: Alika@malamamaunalua.org

Submitted on: 2/4/2012

Comments:

According to the Maunalua Fisher Survey recently completed, 98% of fisherman support effective enforcement. Please pass the bill, it is an important step towards effective enforcement in Hawaii! Mahalo! Alika Winter

Testimony for HB2590 on 2/7/2012 2:00:00 PM

Testimony for HB2590 on 2/7/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 06, 2012 6:36 AM

To: JUDtestimony

Cc: bkfisle@hawaii.rr.com

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Kimo Franklin

Organization: Malama Maunalua

E-mail: bkfisle@hawaii.rr.com

Submitted on: 2/6/2012

Comments:

I am in support of this bill due to its potential to be an effective tool in helping manage and restore our depleted near shore fishing resources.

Mahalo,

Kimo Franklin

Maunalua, O'ahu, Hawai'i

Testimony for HB2590 on 2/7/2012 2:00:00 PM

Testimony for HB2590 on 2/7/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 07, 2012 7:41 AM

To: JUDtestimony

Cc: sparksk001@hawaii.rr.com

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Russell Sparks

Organization: Individual

E-mail: sparksk001@hawaii.rr.com

Submitted on: 2/7/2012

Comments:

Aquatic resource laws are often ignored with violators having little concern of being caught. This act is very badly needed and if passed will be a major step towards setting up an appropriate system for dealing with natural resource violations. As a aquatic resource manager on Maui, I can see first hand how poor the compliance is with our fisheries laws. Many people have little to no regard for our aquatic fisheries rules, and as a result, our fisheries continue to suffer from careless harvest.

Thank you for your careful attention to this critically important matter.

Russell Sparks